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October 17, 2016

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch:

Attached is the confidential version of a written *ex parte* submitted on behalf of Sprint Corporation in the above-referenced proceedings. Pursuant to the Commission's June 24, 2016 Order, which extends the protective orders adopted in WC Docket No. 05-25 to WC Docket No. 16-143,¹ Sprint submits the attached *ex parte*, which contains highly confidential information subject to protective orders issued in these proceedings.²

¹ *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order, 31 FCC Rcd 7104 (2016) (DA 16-722) ("June 24 Order").

² See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Modified Protective Order, 25 FCC Rcd 15168 (2010) (DA 10-2075) ("Modified Protective Order"); *Special Access for Price*

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A redacted version of the *ex parte* is being filed electronically in the above-referenced dockets. The confidential version of the *ex parte* is being filed by hand delivery to the FCC Secretary's Office, and two unredacted copies are being provided to FCC staff as directed.

Please contact me if you have any questions or require any additional information.

Sincerely,

/s/ Emily J. H. Daniels
Emily J. H. Daniels
Counsel to Sprint Corporation

Attachment

cc: Christopher Koves, FCC

Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Second Protective Order, 25 FCC Rcd 17725 (2010) (DA 10-2419) ("Second Protective Order"); *see also* Letter from Sharon E. Gillett, FCC, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd 6571 (May 2, 2011) (DA 11-805) ("First Supplement to Second Protective Order"); Letter from Sharon E. Gillett, FCC, to Donna Epps, Verizon, 27 FCC Rcd 1545 (Feb. 13, 2012) (DA 12-199) ("Second Supplement to Second Protective Order"); *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Protective Orders, at Appendix B, Tariff Investigation Protective Order, 30 FCC Rcd 13680 (2015) (DA 15-1387) ("Tariff Investigation Protective Order").

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Re: *Ex Parte Communication – Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch:

Sprint Corporation (“Sprint”) hereby submits into the record of the above-referenced proceedings additional information regarding the excessive rates it currently is charged for Ethernet-based business data services (“BDS”).¹ This information demonstrates that competitive forces do not adequately constrain the prices that incumbent local exchange carriers (“LECs”) assess for virtually all Ethernet services and therefore raises the exact “concerns . . . with respect to pricing for packet-based BDS” that the Commission should consider in its forthcoming Second Further Notice of Proposed Rulemaking.²

In particular, the first attached chart compares the rates AT&T and Verizon currently charge for a 2 Mbps Ethernet connection to those they would charge for a DS1 connection in two

¹ The availability of competitively-priced Ethernet is essential to Sprint’s wireline business success, as Sprint competes at the retail level with AT&T, CenturyLink, and Verizon for business customers. Out of necessity, Sprint has assembled a list of non-incumbent competitive providers to use in the limited instances in which such services are available.

² Fact Sheet, *Chairman Wheeler’s Proposal to Promote Fairness, Competition, and Investment in the Business Data Services Market*, at 3 (rel. Oct. 7, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1007/DOC-341659A1.pdf. While the Chairman refers to “concerns that may emerge,” the record in this proceeding documents that the problem of excessive prices for packet-based BDS already is present in the marketplace today and requires regulatory intervention.

sample markets if the proposals set forth by Chairman Wheeler were implemented.³ This comparison demonstrates that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] This rate disparity undoubtedly will discourage customers from migrating from TDM to IP services and render the technological transition excessively costly. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] As discussed below, Sprint has more competitive alternatives to these incumbent providers in only very limited circumstances. When alternatives are available, however, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

The remaining attached charts show the prices Sprint currently pays to purchase new Ethernet BDS for three-year terms at various higher speeds located in four cities: Atlanta,⁴ Washington, D.C., Las Vegas, and Seattle.⁵ Because incumbent LEC and competitive provider

³ *Id.* at 1. Specifically, the AT&T and Verizon DS1 rates were based on: (1) a year-one reduction of three percent, a year-two reduction of four percent, and a year-three reduction of four percent; (2) an X-factor of three percent; and (3) an inflation factor of two percent. For purposes of this calculation, Sprint applied the reductions uniformly to all of the rate elements that make up a typical DS1 circuit that Sprint purchases today. Under the current rules, however, the incumbent LECs are not required to apply the reductions in this manner, and Sprint continues to be concerned that the incumbent LECs will adjust their offerings or apply the proposed reductions in a way that prevents the appropriate, meaningful rate reductions.

⁴ The Ethernet pricing information for Atlanta represents the metro area, including Atlanta and its surrounding counties.

⁵ As noted, these prices represent the rates that Sprint currently pays, not “rack rates” or other list prices subject to further negotiation or discount. Moreover, service quality is consistent across the Ethernet offerings of incumbent and competitive providers. Sprint maintains a uniform set of technical specifications for Ethernet circuits used to serve customers located in buildings. These specifications establish minimum service quality requirements for performance characteristics such as frame delay, jitter, frame loss rate, throughput, network availability, and mean time to repair. While providers generally make limited exceptions to their specifications for various reasons, these exceptions are minor and do not vary depending on the identity of the carrier furnishing the Ethernet service (*e.g.*, incumbent LEC, competitive provider).

contract Ethernet rates generally do not vary across different marketplaces within their respective footprints, the listed prices are representative of their respective rates in other urban and suburban areas within their service territories.⁶

These charts demonstrate that, notwithstanding claims by incumbent LECs that they have reduced their Ethernet prices in recent years, the incumbent LECs' rates for Ethernet services, including the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] uniformly are higher than the rates from Sprint's "preferred competitive providers," a category that excludes [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED] [END HIGHLY

CONFIDENTIAL] For this reason, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Accordingly, the rates for Sprint's preferred

competitive providers are indicative of the prices Sprint actually pays today in the limited circumstances in which more competitive alternatives to the incumbent LEC Ethernet offerings are available.⁷

AT&T (Atlanta)

The second slide shows that AT&T's standard rates are significantly higher than the rates offered by Sprint's preferred competitive suppliers at all speeds. For example, AT&T's standard rate for a 10 Mbps connection is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Put differently, AT&T's rate is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] the average

⁶ Despite general price uniformity within a provider's footprint, CenturyLink prices do vary between legacy CenturyLink and legacy Qwest geographic areas (as reflected by Las Vegas and Seattle herein).

⁷ Notably, it is far from clear that the rates from preferred competitive providers are those that would prevail in an effectively competitive marketplace. For example, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

preferred competitive provider rate. Similarly, AT&T's standard rates for 50 Mbps, 100 Mbps, and 200 Mbps connections [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

Furthermore, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]⁸ [END HIGHLY CONFIDENTIAL]

At approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]⁹ [END HIGHLY CONFIDENTIAL]

For example, the [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL] Importantly, Sprint is only able to obtain the lower rates offered by its preferred competitive providers at an extremely limited number of building locations. Specifically, these providers offer service to Sprint at a total of [BEGIN HIGHLY CONFIDENTIAL]¹⁰ [REDACTED]

[REDACTED]¹¹ [END HIGHLY CONFIDENTIAL]

Verizon (Washington, D.C.)

Similarly, the third slide of the attached presentation demonstrates that Verizon's standard rates are much higher than the rates offered by Sprint's preferred competitive suppliers. For example, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

⁸ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

⁹ Providers of BDS may from time to time change the locations where service or a particular rate tier is available.

¹⁰ This total includes all locations where any type of competitive provider, not only preferred competitive providers, offer BDS service to Sprint.

¹¹ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

[REDACTED] [END HIGHLY CONFIDENTIAL] Likewise, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

In the limited number of locations where [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] For 100 Mbps circuits, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Across most available speeds, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

Again, Sprint is only able to receive these lower preferred provider rates in a very limited number of locations. For example, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]¹² [END HIGHLY CONFIDENTIAL]

CenturyLink (Las Vegas and Seattle)

The last two attached slides demonstrate that in CenturyLink territories, the incumbent LEC rates once more are higher than the rates offered by Sprint's preferred competitive suppliers. In Las Vegas, for example, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] For a 100 Mbps connection, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

Again in Seattle, CenturyLink's rates are much higher than the rates of Sprint's preferred competitive suppliers at all speeds. For a 10 Mbps connection, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

¹² [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

[REDACTED] [END HIGHLY CONFIDENTIAL] At 100 Mbps, [BEGIN
HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

In sum, the attached charts demonstrate that incumbent LECs routinely assess standard rates for Ethernet services that far exceed those offered by any type of competitive provider. Furthermore, the charts also show that non-ILEC offerings are only available in a small fraction of the buildings served by incumbent LECs, meaning that the incumbent LEC is Sprint's only choice in the vast majority of locations. For example, [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

Further, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY
CONFIDENTIAL] Moreover, the Commission should not overstate the competitive significance of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL] for a number of reasons. First, as noted, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL] Second, [BEGIN HIGHLY
CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL] Finally, [BEGIN HIGHLY
CONFIDENTIAL] [REDACTED]
[REDACTED] [END
HIGHLY CONFIDENTIAL] This pricing behavior clearly demonstrates that the incumbent LECs' prices for BDS are not effectively constrained by the limited competition, whether actual or potential, that the incumbent LECs face.

If you have any questions, please feel free to contact me at (703) 433-3786.

Respectfully submitted,

/s/Charles W. McKee

Charles W. McKee
Vice President, Government Affairs
Federal & State Regulatory

REDACTED FOR PUBLIC INSPECTION

ATTACHMENT

REDACTED

REDACTED FOR PUBLIC INSPECTION